

OFFICE OF CONSUMER ADVOCATE
COMMONWEALTH OF PENNSYLVANIA
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923

IRWIN A. POPOWSKY

Consumer Advocate

(717)
783-5048
(Fax) 717-
783-7152

September 12, 2005

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

In the Matter of:
IP-Enabled Services
WC Docket No. 04-36
E911 Requirements for IP-Enabled
Service Providers
WC Docket No. 05-196

Dear Ms. Dortch:

Enclosed for filing please find Reply Comments of the National
Association of State Utility Consumer Advocates in the above-referenced matter.

Please feel free to contact me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Shaun A. Sparks".

Shaun A. Sparks
Assistant Consumer Advocate

Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 04-36
IP-Enabled Services)	
)	WC Docket No. 05-196
E911 Requirements for IP-Enabled Service)	
Providers)	

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION
OF STATE UTILITY CONSUMER ADVOCATES**

Philip F. McClelland
Senior Assistant Consumer Advocate
Shaun Sparks
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
Phone: (717) 783-5048

Rob McKenna
Attorney General
Robert W. Cromwell, Jr.
Assistant Attorney General
Public Counsel Section
Washington State Attorney General
900 Fourth Ave., Suite 2000
Seattle, WA 98164-1012
Phone: (206) 464-6595

David C. Bergmann
Assistant Ohio Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Phone: (614) 466-8574
Fax: (614) 466-9475

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone: (301) 589-6313
Fax: (301) 589-6380

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I. INTRODUCTION AND EXECUTIVE SUMMARY

On June 3, 2005 the Federal Communications Commission (“Commission” or “FCC”) released its Order (“June 3 Order”) requiring interconnected Voice over Internet Protocol (“VoIP”) providers to make enhanced 9-1-1 (“E9-1-1”) services available to their customers within 120 days of the publication of the order in the Federal Register and requiring such providers to certify that they have done so.¹ The Commission concurrently issued a notice of proposed rulemaking (“NPRM” or “Notice”) requesting comments on a range of issues relating to E9-1-1 service availability to the customers of VoIP providers (“E9-1-1 VoIP”). The June 3 Order was published in the Federal Register on June 29, 2005, and comments on the June 3 Order were due August 15, 2005. replies to the comments of interested parties are due September 12, 2005.

The National Association of State Utility Consumer Advocates (“NASUCA”)²

¹ See *First Report and Order and Notice of Proposed Rulemaking*, FCC 05-116, 20 FCC Rcd 10245 (June 3, 2005) (“Order”), ¶ 1. The Order was published in the Federal Register on June, 29, 2005. 70 Fed. Reg. 37,273 (June 29, 2005). In the Order, the Commission describes E9-1-1 service in conjunction with the various equipment and providers involved in provisioning E9-1-1 service:

In a typical implementation, the Wireline E911 Network includes the Selective Router, which receives 911 calls from competitive and incumbent LEC central offices over dedicated trunks. The Selective Router, after querying an incumbent LEC-maintained Selective Router Database (SRDB) to determine which PSAP serves the caller’s geographic area, forwards the calls to the PSAP that has been designated to serve the caller’s area, along with the caller’s phone number (ANI). The PSAP then forwards the caller’s ANI to an incumbent LEC maintained Automatic Location Information database (ALI Database), which returns the caller’s physical address (that has previously been verified by comparison to a separate database known as the Master Street Address Guide (MSAG)). The Wireline E911 Network thus consists of: the Selective Router; the trunk line(s) between the Selective Router and the PSAP; the ALI Database; the SRDB; the trunk line(s) between the ALI database and the PSAP; and the MSAG.

Notice at ¶ 15. Although the Order does not require interconnected VoIP service providers to provision E9-1-1 via any particular technology, the Order does require interconnected VoIP providers to provision this type of E9-1-1 functionality to consumers by the required date.

² NASUCA is a voluntary, national association of 44 consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the

applauds the timely action of the Commission in this matter. Access to adequate 9-1-1 emergency services is vital to public safety and welfare throughout the United States. It is an important step in the development of VoIP services that interconnected VoIP service providers do their part to ensure that all citizens have access to critical emergency services via dialing 9-1-1 on all telephones. NASUCA looks forward to working with the Commission, VoIP service providers, the states, and with emergency services providers to bring about this important national priority in a timely and effective manner.³

As a general response to the comments of parties participating here, NASUCA reasserts its initial recommendations regarding E9-1-1 VoIP:

- Although NASUCA believes the Commission should ultimately classify VoIP service as a telecommunications service subject to Title II regulation, it nonetheless supports the Commission's exercise of its jurisdiction to achieve this important public safety goal.
- The Commission should extend its E9-1-1 VoIP requirements to all VoIP services that access the public switched telephone network ("PSTN").
- The Commission should establish measurable goals with fixed deadlines pursuant to its Title I and Title II authority for the full deployment of E9-1-1 VoIP.

These recommendations will help ensure that consumers receive the maximum benefit from VoIP services, including access to E9-1-1 service. NASUCA urges the Commission to adopt these recommendations.

As a backdrop to the recommendations above, NASUCA submits that the public interest should be the primary consideration in this proceeding. As the Commission made clear in the June 3 Order, the Communications Act charges the Commission with

state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

³ This would include participating on the Commission's recently-announced E9-1-1 task force. News Release, FCC, *FCC Announces Joint Federal/State VoIP Enhanced 911 Enforcement Task Force* (July 25, 2005) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260150A1.doc).

and providers.

NASUCA supports the Commission in its effort to address this urgent public safety concern, and encourages the Commission to adopt the requirements of the June 3 Order as proposed, particularly the deadlines by which interconnected VoIP service providers must comply with the Order. To that end, NASUCA responds to selected comments of other participants.

II. THE COMMISSION WAS CORRECT TO INCLUDE SIMULTANEOUS-USE VoIP SERVICES WITHIN THE SCOPE OF THE ORDER AND SHOULD EXPAND THE ORDER TO INCLUDE ALL VoIP SERVICES THAT MAY ORIGINATE CALLS TO THE PSTN.

NASUCA submits that VoIP services that can originate telephone calls to the PSTN should not escape their obligations under the Order via contractual or regulatory arbitrage. The Commission should make clear that simultaneous-use services – two services that when used together provide for access to the PSTN via the origination of a call to the PSTN on one service, and the termination of that call to the PSTN in another, require functional E9-1-1 service. NASUCA supports the Commission’s tentative determination that VoIP services that provide for the ability to combine services in this manner fall under the requirements of the June 3 Order.⁹ NASUCA submits that the Commission should reject arguments claiming that an illusory separate-service distinction should exempt VoIP providers from the “interconnected” classification.¹⁰

Nevertheless, NASUCA also urges the Commission to expand this tentative

⁸ Comments of Skype Communications at 4.

⁹ Order at ¶ 58.

¹⁰ Comments of AT&T at 9; Comments of Skype at 3-6; Comments of Qwest at 4.

conclusion to include all VoIP services that access the PSTN. The FCC should be cognizant of the rapidity with which E9-1-1 obligations may change under these types of product offerings. The Commission should make clear that *any* ability to originate telephone calls to the PSTN requires functional E9-1-1 service.

Like NASUCA, the National Emergency Number Association (“NENA”) addressed this issue in its Comments, suggesting, “all devices or services that can send calls to the public switched telephone network should have E9-1-1 obligations.”¹¹ Likewise, the Association of Public-Safety Communications Officials-International, Inc. (“APCO”) stated “[w]e believe that any 9-1-1 call that is placed directly or indirectly through the PSTN must be subject to the E9-1-1 rules.”¹² These groups are correct to be concerned with how VoIP service providers access the PSTN, and the regulatory impact of how that access occurs.

As NASUCA will explain below, a number of commentors argue that the requirements of the June 3 Order should not apply to services that do not, on their own, qualify as interconnected VoIP services. While these services are not interconnected VoIP services in their own right, as the comments discussed make clear, these products allow the purchaser to use VoIP services to interconnect with the PSTN. Conceptually, vendors sell these products in an “unbundled” fashion, and when consumers “bundle” the services prior to use, the consumer then has interconnected VoIP service, or an equivalent to such a service.

In its comments, NASUCA described how the Commission previously

¹¹ Comments of NENA at 3.

¹² Comments of APCO at 2.

determined that pulver.com's Free World Dialup ("FWD") was an information service,¹³ and how the Commission arrived at that conclusion based, in part, on the Commission's belief that FWD had no contact with the PSTN.¹⁴ NASUCA also explained how FWD members may now combine FWD with other Pulver services to access the PSTN.¹⁵ The Commission should not overlook this important aspect of VoIP service and the public safety implications that it holds.

Similar to NASUCA, NENA, and APCO, Qwest commented that "[w]here a VoIP provider offers service – even if in two discrete components – that can be combined to provide what is the practical equivalent of traditional Plain Old Telephone Service ("POTS") or interconnected VoIP services, E911 obligations should apply."¹⁶ NASUCA agrees -- and urges the Commission to make very clear that such arrangements do not escape the requirements of the June 3 Order.

VON, for example, suggests that the Commission should not expand this proceeding to include partially interconnected VoIP services.¹⁷ VON argues that the Commission should not extend the proceeding to include SkypeOut or SkypeIn. VON acknowledges that SkypeOut and SkypeIn utilize traditional numbering resources, provide inbound and outbound calling to the PSTN, and that this connectivity is provided for a fee.¹⁸ VON also argues that these services should *not* fall under the requirements of

¹³ See *Petition for Declaratory Ruling That Pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004) ("*Pulver Order*").

¹⁴ NASUCA Comments at 9-10.

¹⁵ NASUCA Comments at 12; See <http://www.freeworlddialup.com/> (accessed August 2, 2005); <http://www.libretel.com/> (accessed August 2, 2005).

¹⁶ Comments of Qwest at 2.

¹⁷ Comments of VON at 15.

¹⁸ *Id.* at 16.

the June 3 Order because of their discrete character. Skype likewise argues in its comments that the combination of these services should not fall under the Commission's interconnected VoIP service E9-1-1 regulations.¹⁹ Skype justifies this argument by stating that SkypeIn and SkypeOut are software defined and that they are priced individually.²⁰ These distinctions are irrelevant to a person's reliance on a service or combination of services to seek aid in an emergency. Skype adds that its subscribers would not expect that 9-1-1 emergency services would be available over a combination of these services.²¹

The Commission was clear that the types of services described by VON and Skype must comply with the requirements of the June 3 Order. NASUCA supports this determination – the Commission should prevent this type of contractual arbitrage, as this is exactly the problem that has endangered the public safety in regard to VoIP voice services in the first instance. NASUCA urges the Commission to reject regulatory schemes and classifications that invite arbitrage, as would VON and Skype's suggestions for an exemption for partially interconnected VoIP services.

In addition to urging the Commission to adopt the requirements of the June 3 Order, NASUCA also suggests that the Commission expand the requirements of the June 3 Order to include all those VoIP services that may originate calls to the PSTN. NASUCA submits that this approach would clearly provide the necessary public safety assurances at the heart of the Commission's Order.

¹⁹ Comments of Skype at 6.

²⁰ Id.

²¹ Id.

III. THE COMMISSION SHOULD RECOGNIZE THE ROLE OF THE STATES IN GOVERNING AND FUNDING 9-1-1 EMERGENCY SERVICES.

For jurisdictional and practical reasons it is imperative that the FCC acknowledge the local nature of 9-1-1 emergency services, and to the extent permitted or required, clearly outline the limits of the FCC's authority in this area. Along with NASUCA, NENA applauds the Commission for affirming a state role in the enforcement of VoIP E9-1-1.²²

This is particularly true regarding fees for 9-1-1 service, and the Commission should reject any assertion that the FCC alone should administer issues related to 9-1-1 fees.²³ NENA also recognizes the need for states to retain the ability to collect and administer 9-1-1 fees.²⁴ The FCC has little or no power to regulate end user 9-1-1 fees, because this function is at the core of the states' tax and police powers. The FCC must make clear to the industry that these matters are local, and will be governed at that level. Regarding suggestions that the states have no role in this matter, particularly concerning technical matters, the Commission should simply reject these arguments.²⁵ The Commission should make clear that the E9-1-1 regulatory regime includes meaningful state participation in all aspects of the provision of 9-1-1 emergency services.

In regard to 9-1-1 fees, the Commission should require the states to designate one state-wide collection point to which VoIP providers may forward 9-1-1 payments. This will enable VoIP providers to efficiently process those payments, and will assist in the elimination of confusion regarding the appropriate entity to which VoIP providers should

²² Comments of NENA at 14.

²³ Comments of VON at 23.

²⁴ Comments of NENA at 15.

²⁵ Comments of Intrado at 4.

remit 9-1-1 fees collected from subscribers.

In addition, while NASUCA supports the FCC's efforts here, NASUCA is concerned regarding the enforcement of the rules the Commission has established. The Commission should be clear that, much like the slamming rules, the FCC will permit the states to enforce the regulations it establishes here. That way, emergency responders and VoIP providers will be able to develop efficient solutions to problems that may be highly localized in nature. Requiring all disputes to be referred to the Commission may frustrate this important effort by introducing unnecessary delay and confusion. Only if local or state authorities are unable to resolve these important issues should the FCC assert jurisdiction. Otherwise, the FCC should encourage and enable local and state authorities to resolve these important issues.

NASUCA also points out that access to the MSAGs used in the provision of E9-1-1 services is controlled at the local level. It is imperative that the FCC recognize the level of local control and maintenance of the systems on which reliable 9-1-1 service depends, particularly the MSAG. The Commission must recognize the role of the states, counties, and even municipalities or townships (in some states) in the operation of this aspect of emergency services programs.

IV. THE COMMISSION SHOULD REJECT THRESHOLD E9-1-1 DEPLOYMENT TRIGGERS.

Vonage comments that deployment of E9-1-1 to new areas is costly and time consuming because VoIP providers must interact with third-party providers and construct network connections.²⁶ Vonage also comments that it cannot achieve economies of scale concerning selective router connections in less populated areas.²⁷ Based on these

²⁶ Comments of Vonage at 15.

²⁷ Id. at 16.

arguments, Vonage submits that the Commission should establish a “threshold” rule that would trigger E9-1-1 obligations on the part of an interconnected VoIP provider “only when a particular number of customers have registered addresses with the service territory of a selective router.”²⁸ Vonage suggests that, until the threshold is met, the provider should only be required to provide an “alternative” form of 9-1-1 service.²⁹ The Commission should reject this suggestion.

First, it is questionable whether an “alternative” form of E9-1-1 service is acceptable at any time. NASUCA submits that it would be unacceptable if by “alternative” 9-1-1 service Vonage means 9-1-1 routing to a PSAP’s 10-digit emergency 24x7 administrative line.³⁰ This is the 9-1-1 solution that triggered this proceeding in the first instance. The Commission should do away with this practice as soon as is possible.

Next, the Commission should not establish the threshold requirements that Vonage suggests. The safety and welfare of the public are a concern very much larger than Vonage’s costs or time in setting up E9-1-1 solutions that comply with the regulations of this Commission. It is inherently unreasonable to permit a service provider to expose some of its customers to greater risks to life and property until the provider is willing to incur the cost of providing adequate E9-1-1 service to those customers. The Commission should reject any solution, even an interim one, where some consumers receive adequate E9-1-1 service and others do not based solely on location.

²⁸ Id. at 17.

²⁹ Id.

³⁰ NASUCA acknowledges Intrado’s comments that the Commission should allow interconnected VoIP providers to continue their current use of PSAP 10-digit emergency numbers as an interim solution until a native solution may be deployed. NASUCA agrees, but only to the extent that the use of PSAP 10-digit emergency numbers is acceptable until the deadlines established in the June 3 Order.

V. CONCLUSION

NASUCA supports the FCC's effort to have VoIP service providers ensure that consumer have access to E9-1-1 emergency services dialing. As NASUCA provided in its Comments, the Commission should also establish measurable goals with fixed deadlines pursuant to its Title II authority for the universal deployment of E9-1-1 VoIP. Nevertheless, the Commission's efforts in its June 3 Order are steps in the right direction, and the Commission should not waver from the course it set at that time in terms of requirements or deadlines. Staying the course is critical to the protection of the public health, safety and welfare.

Respectfully submitted,

Philip F. McClelland
Senior Assistant Consumer Advocate
Shaun Sparks
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
Phone: (717) 783-5048

Robert W. Cromwell, Jr.
Assistant Attorney General
Public Counsel Section
Washington State Attorney General
900 Fourth Ave., Suite 2000
Seattle, WA 98164-1012
Phone: (206) 464-65958

David C. Bergmann
Assistant Ohio Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Phone: (614) 466-8574
Fax: (614) 466-9475

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone: (301) 589-6313
Fax: (301) 589-6380

August 15, 2005
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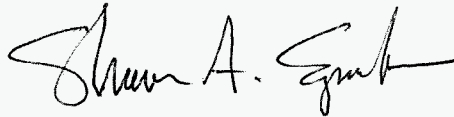
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	
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IP-Enabled Services	:	WC Docket No. 04-36
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E911 Requirements for IP-Enabled Service Providers	:	WC Docket No. 05-196
	:	

I hereby certify that I have this day served a true copy of the foregoing document, Reply Comments of the National Association of State Utility Consumer Advocates, upon parties of record in this proceeding.

Dated this 12th day of September, 2005.

Respectfully submitted,



Shaun A. Sparks
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048

*85738